

Q286



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/00FY/LIS/2013/0011**

Property : **Apartment 45, Raleigh Square 2,
Nottingham, NG7 4DN**

Applicant : **Kevin Stanley**

Representation : **N/A Written Representations**

Respondent : **Metropolitan Housing Trust Limited**

Representation : **N/A Written Representations**

Type of Application : **(1) To determine liability to pay and
reasonableness of service charges
under section 27A of the Landlord
and Tenant Act 1985 ('the Act') and
(2) for an Order under section 20C of
the Act**

Tribunal Members : **Judge W J Martin (Chairman)
Mr J E Ravenhill F.R.I.C.S**

Date and venue of Hearing : **None – determined on the basis
of written representations.**

Date of Decision : **29 AUG 2013**

DECISION

© CROWN COPYRIGHT 2013

Decision

The Management Fee for the year 2011/2012 is reduced by one third to £232.67

Reasons For the Tribunal's Decision

Preliminary

- 1 The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the leasehold valuation tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No 1036) ('the Transfer Order') the functions of leasehold valuation tribunals were, on 1st July 2013, transferred to the First-tier Tribunal (Property Chamber). By virtue of the transitional provisions, applications to leasehold valuation tribunals in respect of which a decision had not been issued before the 1st July 2013, automatically became proceedings before the First-tier Tribunal (Property Chamber). The Transfer Order also amended the relevant legislation under which leasehold valuation tribunals were referred to by substituting the words 'First-tier Tribunal' for 'leasehold valuation tribunal' within the relevant parts of the legislation. The extracts from the legislation applicable to the present applications that appear below incorporate the changes made by the Transfer Order. In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber) or, where the context admits, the leasehold valuation tribunal.

Background

- 2 On 4th April 2013 Kevin Stanley ('the Applicant') applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 ('the Act') for a determination as to whether service charges are payable and if so as to their reasonableness in respect of Apartment 45, Raleigh Square 2, Nottingham, NG7 4DN ('the Property'). The Lessor is Metropolitan Housing Trust Limited ('the Respondent'). The Application also requested an Order under section 20C of the Act preventing the Respondent adding its costs in connection with the Tribunal proceedings to service charges in the future.
- 3 The Applicant's Lease ('the Lease') is dated 10th May 2004, and is made between the Respondent (1) and the Applicant (2). In consideration of a premium the Property was demised to the Applicant for the term of 99 years from 25th March 2004. The Lease is a 'shared-ownership' lease containing 'staircasing' provisions enabling the lessee to acquire larger shares in the Property. These provisions have been exercised by the Applicant, who therefore now owns a 100% share of the Property. The Lease reveals that the service charge year is 1st April to 31st March in each year.
- 4 The Application requested a determination that the management fees of the Respondent for the service charge year 2011/12 are reduced. The Application also stated that the Applicant agrees to a paper determination. The

Respondent agreed to this also and accordingly the Tribunal issued appropriate Directions.

The relevant legal provisions

5 LANDLORD AND TENANT ACT 1985

18 Meaning of “service charge” and “relevant costs”

- (1) *In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-*
- (a) *which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’ cost of management, and*
 - (b) *the whole or part of which varies or may vary according to the relevant costs.*
- (2) *The relevant costs are costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection for which the service charge is payable.*
- (3) *For this purpose-*
- (a) *“costs” includes overheads*
 - (b) *costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.*

19 Limitation of service charges: reasonableness

- (1) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—*
- (a) *only to the extent that they are reasonably incurred, and*
 - (b) *where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;*
- and the amount payable shall be limited accordingly.*
- (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise.*

27A Liability to pay service charges: jurisdiction

- (1) *An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to-*
- (a) *the person by whom it is payable,*
 - (b) *the person to whom it is payable,*

- (c) *the amount which is payable,*
- (d) *the date at or by which it is payable, and*
- (e) *the manner in which it is payable*

(2) *Subsection (1) applies whether or not any payment has been made*

(3) *An application may be also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to-*

- (a) *the person by whom it is payable,*
- (b) *the person to whom it is payable,*
- (c) *the amount which is payable,*
- (d) *the date at or by which it is payable, and*
- (e) *the manner in which it is payable*

(4) *No application under subsection (1) or (3) may be made in respect of a matter which –*

- (a) *has been agreed or admitted by the tenant*
- (b) *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party*
- (c) *has been the subject of a determination by the court, or*
- (d) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement*

(5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment*

(6) *and (7) not relevant to this application*

20C Limitation of service charges: costs of proceedings

(1) *A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ...the First-tier Tribunal... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or person specified in the application.*

(2) *The application shall be made....*

06. The Applicant submits that one half of the annual fee should be reimbursed to him because of the poor performance by the Respondent. He also requests that a determination is made awarding him compensation and that any decision is extended to the other Leaseholders at Raleigh Square.

7 The Respondent

01. The financial year is 1st October to 30th September. A table showing the dates the final accounts was provided to the Tribunal.
02. Estimates for the charges are calculated from 1st April to 30th March, this being the same period as the rent periods in the Lease. In February the Estimates are sent to the Leaseholders for consideration. Copies of these were provided.
03. The Applicant says that he receives poor service regarding the audited accounts. However, information is supplied regularly and the Leaseholders are given the opportunity to comment.
04. It is alleged that no prejudice or loss has been suffered as a result of the accounts being sent out on the dates shown in the table. However, it is the aim in future years to provide audited accounts within 6 months.
05. With regard to the CCTV, the Lease does not create an obligation for the Respondent to provide a system. In 2010 a survey was conducted which revealed that 76% of residents wanted the system replaced. This was reported in the Respondent's magazine 'Home Matters'.
06. There is not currently a contract to replace the CCTV system. There is no published date and the Respondent is in any case investigating whether a section 20 consultation will be required.
07. There has been no charge for the CCTV since August 2011. The Applicant has complained about the delays and received the sum of £50 as compensation in 'full and final' payment.

8 The table referred to in paragraph 7.01 above is reproduced below:

Year	Sent out for consideration	Final
2007/08	25th March 2009	25th March 2009
2008/09	23rd April 2010	11th August 2010
2009/10	15th July 2011	8th August 2011
2010/11	27th June 2010	No audit yet
2011/12	In process	

The Tribunal's Inspection and Determination

9 The Tribunal made an inspection of the exterior and internal common parts in Raleigh Court 2 on 12th August 2013. The Property comprises a flat in a predominantly modern complex, comprising two main blocks. There is secure car parking accessed from Raleigh Street and from the blocks themselves. The

Tribunal found the common areas and the car parks to be generally well maintained and in an acceptable condition.

10 The Tribunal notes the rather unusual system in operation for estimating the service charge for the following year in respect of the period 1st April to 31st March, but for the service charge accounts to be for the period 1st October to 30th September. The Tribunal can see no reason for this departure from the terms of the Lease and none has been provided by the Respondent. The Lease (Clause 7 (1)) specifies that the 'Account Year' is a year ending on 31st March, but also provides that the period can be any other date as the Landlord might reasonably determine. Accordingly the change from 31st March to 30th September is permitted by the Lease.

11 However, the estimate for the Account Year (termed 'Service Provisions') in the Lease is to be computed in accordance with the detailed provisions of Clause 7 (4). Clause 7 (4) (a) provides:

(4) The Service Provisions shall consist of a sum comprising:-

(a) the expenditure estimated by the Landlord as likely to be incurred in the Account Year by the Landlord upon the matters specified in sub-clause (5) of this Clause together with

(b) and (c) [relating to reserves]

12 It is clear, therefore, that the Service Provisions are to be estimated by reference to the Account Year. There is no legal justification for a departure from this by liking the estimate to a different period. In this regard the Tribunal agrees with the Applicant that the practice is likely to contribute to the delays in providing the Accounts. The Table at paragraph 8 reveals that that for the years 2008/9 and 2009/10, the certified accounts were provided almost one year after the end of the Account Year and in respect of 2010/11 have not been provided some 22 months after the end of the Account Year.

13 Although it is not required by the Lease, the Tribunal regards the submission of accounts for consideration, before being finalised, to be good practice. However, the Tribunal considers that the entire process ought to be completed within 6 months of the end of the Account Year. Leaseholders are entitled to know within a reasonable period whether there are any further sums to pay over and above the Service Provisions.

14 For the above reasons the Tribunal finds that there has been a failure of management by the Respondent in respect of the provision of the accounts.

15 With regard to the CCTV cameras, the Tribunal accepts that the Lease does not require the provision of these. However, there is an existing installation which, on the Respondent's admission (in the letter of 19th April 2013), is only 30% effective. The Respondent says that the system is not presently being charged for and explains that a survey has been carried out and that

consideration is being given as to whether consultation under section 20 of the Act is necessary.

- 16 The Tribunal agrees with the Applicant that there has been a failure of management on the part of the Respondent with regards to the CCTV system. Raleigh Court is in a city centre location and the provision of security ought to be a priority. There has clearly been an unacceptable delay in either repairing the existing system or installing a new system. The survey of leaseholders was carried out in 2010, and yet no positive action yet appears to have been taken to act effectively in respect of the leaseholders' wishes.
- 17 The Applicant states that the combined management fee for the Account Year ending 30th September 2012 is £309.96. However, the Service Charge Estimate for the year in question indicates that the amount is in fact £349. The Applicant requests a reduction of one half in the management fee. The Tribunal agrees that there should be a reduction but considers that the management failures it has identified only justify a reduction in the management fee for the Account Year of one third.
- 18 Accordingly, it is the determination of the Tribunal that the management fee for the Account Year ending on 30th September 2012 is reduced to £232.67.
- 19 The Tribunal has no power to award compensation, and if it had such a power, would not exercise it in the present case other than in respect of the reduction to the management fee referred to above. No other leaseholders have joined into these proceedings, and accordingly the decision of the Tribunal is only enforceable by the Applicant.
- 20 The acceptance of compensation by the Applicant does not amount to an 'agreement or admission' for the purposes of section 27A (4) (a) of the Act, which would exclude the Tribunal's jurisdiction. Equally, the Respondent's complaints procedure does not amount to 'arbitration' for the purposes of section 27A (4) (c). Accordingly, the payment of compensation by the Respondent under its complaints procedure has no effect upon the Tribunal's determination, and the amount paid may not be set-off against the Tribunal's award.
- 21 In view of the its findings with regard to the management failings of the Respondent, the Tribunal considers it appropriate to make the order requested under section 20C of the Act. Accordingly, the Tribunal orders that none of the Respondent's costs in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.
- 22 In making its determinations the Tribunal had regard to the submissions of the parties, the relevant law and its knowledge and experience as an expert tribunal, but not any special or secret knowledge.
- 23 If any party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be

made within 28 days of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013.

Judge W.J. Martin – Chairman

29 AUG 2013